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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,671	04/16/2004	Michael Chen	BPCUR0007MC (C-52)	9595
27939 7590 02/05/2010 PHILIP H. BURRUS, IV 460 Grant Street Atlanta, GA 30312				
EXAMINER PARRA, OMAR S				
ART UNIT		PAPER NUMBER		
2421				
MAIL DATE		DELIVERY MODE		
02/05/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/826,671

Applicant(s)

CHEN ET AL.

Examiner

OMAR PARRA

Art Unit

2421

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 7-11, 13, 18-25, 27-32, 37, 38 and 41-52 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1, 4, 5, 7-11, 13, 18-25, 27-32, 37, 38 and 41-52 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Proficiency's Patent Drawing Review (PTO-544)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/15/2009 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 25 and 27 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that *"Plotnick fails to teach determining content previously ordered or viewed by a user, and removing from a queue unviewed barker advertisements corresponding to content previously viewed by the user"*, Remarks section page 9. To this matter, the examiner respectfully disagrees.

After reviewing applicant's specification and originally filed claims, the examiner did not find support for the limitation: *"removing from a queue unviewed barker advertisements corresponding to content previously viewed by the user"*, as explained below.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims **1, 4, 5, 7-11, 13, 18-25, 27-32, 37, 38, 41-43 and 48-52** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

After reviewing applicant's specification and originally filed claims, the examiner did not find support for the limitation: *"removing from a queue unviewed barker advertisements corresponding to content previously viewed by the user"*.

The examiner reviewed applicant's specification and original claims (especially on the portions cited by applicant on the Remarks section page 9 filed on 05/19/2009), and was not able to find that the reason to remove from a queue barker advertisements corresponding to content previously viewed by the user was that they are unviewed.

The cited portion on the 05/19/2009 reply (specification page 11, lines 24-27) discloses:

As the user makes selections from the menu, the system determines the menu level and selections made by the user at step 2040. A determination is made at step 2050 whether the highest-level menu is being navigated, e.g., the genre level. If so, the subscriber's history, e.g., past purchases, are reviewed at step 2060, and barkers related to those purchases are removed from the barker list. Then, a barker is screened to the subscriber based, e.g., on the subscriber's genre preference, at step 2070.

And further discloses at page 12:

If, at step 2050, it is determined that the highest-level menu is not being navigated, the genre of interest to the subscriber is determined at step 2055. At step 2065, the subscriber's past purchases are reviewed, and barkers related to the past purchases are removed from the barker list. From step 2065, the system presents a barker for the genre that fits the user's preferences and that has not been previously viewed at step 2080.

The examiner respectfully believes that the cited portions, at most, teach that when a program or content was ordered or purchased, the barkers related to the past purchases are removed from the barker list and replaced with other barkers that fit user's preferences and have not been previously viewed by the user. These portions and originally filed claims are silent about the reason to remove those barkers from the queue is whether or not the barkers were viewed.

Therefore, as claimed, claims 1 and 25 do not correspond to or lack support from the specification.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR PARRA whose telephone number is (571)270-1449. The examiner can normally be reached on 9-6 PM (M-F, every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

OP